

April 3, 2018

Eric Mooney, Esquire  
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Barzilai K. Axelrod  
Department of Justice  
820 N. French Street  
Carvel Bldg., 7<sup>th</sup> Floor  
Wilmington, DE 19801

**RE: State v. Charles F. Doneker, ID. No. 1703002453**  
**State v. Vincent F. Borgesi, ID. No. 1703003621;**  
**State v. Nicole D. Gonzon, ID. No. 1703004441;**  
**State v. Kunal C. Samaroo, ID. No. 1703012170;**  
**State v. Jeanine Roney, ID No. 1703022178;**  
**State v. Dale G. Hodges, ID. No. 1704009944;**  
**State v. Dustin R. Moore, ID. No. 1704019604;**  
**State v. Loretta L. Baker, ID. No. 1705000475;**  
**State v. Ryan M. Hamilton, ID. No. 1705002489;**  
**State v. Anthony J. Frasso, ID. No. 1705004095;**  
**State v. James Romano, III, ID. No. 1705004640;**  
**State v. Forrest D. Jackson, ID. No. 1705019739;**  
**State v. Patrick W. Miles, ID. No. 1706005604;**  
**State v. Peter L. McCarthy, ID. No. 1706002309;**  
**State v. Jessica Griffith, ID. No. 1706007272;**  
**State v. Ethan M. Hoffman, ID. No. 1706011092;**  
**State v. Elysia R. Garin, ID. No. 1706011956;**  
**State v. Lauren M. Hodges, ID. No. 1706013845**  
**State v. Allison M. McNulty, ID. No.1703003517**

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Dear Mr. Mooney and Mr. Axelrod:

Effective June 30, 2017, House Bill 207 divested the Justice of the Peace Court of jurisdiction to try violations of 21 *Del. C.* § 4177, Driving Under the Influence of Alcohol and/or a Drug (“DUI”).<sup>1</sup> Soon thereafter, the Justice of the Peace Court began *sua sponte* transferring DUI cases to this Court. Many of the affected defendants, including the above captioned defendants (“Defendants”), moved to dismiss, maintaining that the Justice of the Peace Court’s *sua sponte* transfer was improper. At the State’s request, the Court stayed decision on Defendants’ Motions to Dismiss pending Judge Beauregard’s issuance of a decision on the first set of such motions received by the Court.

Judge Beauregard issued her decision in *State v. Atsidis* on February 26, 2018, finding that the Justice of the Peace Court had authority under 10 *Del. C.* § 1902A to transfer DUI cases pending before the Justice of the Peace Court as of June 30, 2017, to this Court.<sup>2</sup> The transfer of the instant cases is substantially similar to the cases addressed in *Atsidis*, and the Court finds that the Justice of the Peace Court had the authority under § 1902A to transfer Defendants Jeanine Roney, Dale Hodges, Dustin Moore, Loretta Baker, Ryan Hamilton, Anthony Frasso, James Romano, III, Elysia Garin, and Lauren Hodges’s cases to this Court, and these cases should not be dismissed on this ground for all the reasons discussed in *Atsidis*.

On this point, one factual difference exists between the aforementioned Defendants, the *Atsidis* defendants, and Defendants Forrest Jackson, Patrick Miles, Peter McCarthy, Jessica Griffith, and Ethan Hoffman. The Justice of the Peace Court sent Defendants Roney, Hodges (Dale), Moore, Baker, Hamilton, Frasso, Romano, Garin, Hodges (Lauren), and the *Atsidis* defendants a single notice of transfer, whereupon the State filed informations in this Court and the defendants filed arraignment by pleading forms. In contrast, for reasons that are not entirely clear, the Justice of the Peace Court sent Defendants Jackson, Miles, McCarthy, Griffith, and Hoffman two notices of transfer, one on July 7, 2017, and a second on August 3, 2017.<sup>3</sup>

In Defendants’ Motions to Dismiss, Mr. Mooney describes this process as Defendants being “ping ponged” between the Justice of the Peace Court and this Court. Further, in a letter submitted to the Court following the issuance of *Atsidis*, Mr. Mooney argues that, assuming

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<sup>1</sup> *House Bill 207, 149th General Assembly (Present)*, Delaware General Assembly, <http://legis.delaware.gov/BillDetail?legislationId=25865>; 81 Del. Laws ch. 51 (2017), <http://delcode.delaware.gov/sessionlaws/ga149/chp051.pdf>.

<sup>2</sup> *State v. Atsidis*, 2018 WL 1053009, at \*2–3 (Del. Com. Pl. Feb. 26, 2018).

<sup>3</sup> See Defendants McCarthy and Griffith’s September 20, 2017 Motions to Dismiss, Exs. C, E; Defendants Jackson, Miles, and Hoffman’s September 21, 2017 Motions to Dismiss, Exs. C, E.

*arguendo* that the Justice of the Peace Court had authority under § 1902A to transfer Defendants' cases once, Defendants Jackson, Miles, McCarthy, Griffith, and Hoffman's cases should nevertheless be dismissed because the Justice of the Peace Court abused its authority when it transferred Defendants' cases for a second time. The Court does not agree.

As Judge Beauregard explained in *Atsidis*, the Justice of the Peace Court did not perfectly follow the procedural elements of § 1902A in transferring DUI cases pending before it, and the manner of the transfers "caused Defendants, the State, and this Court wholly avoidable confusion and turmoil."<sup>4</sup> Although the Justice of the Peace Court sent Defendants two notices of transfer, the record reflects that this Court accepted Defendants Jackson, Miles, McCarthy, Griffith, and Hoffman's cases only once, on August 4, 2017, following the Justice of the Peace Court's issuance of the August 3, 2017, notices of transfer. Once this Court accepted Defendants' cases, the State filed informations, and Mr. Mooney refiled his previously submitted notices of appearance, motions to suppress, requests for discovery, and Rule 10(c) arraignment by pleading forms.

Defendants Jackson, Miles, McCarthy, Griffith, and Hoffman likely experienced some additional confusion and anxiety as a result of receiving a second notice of transfer. However, none of the Defendants allege that their ability to defend their case has been prejudiced as a result of receiving two notices, and the Court does not find the fact that the Justice of the Peace Court sent out two notices in Defendant Jackson, Miles, McCarthy, Griffith, and Hoffman's cases should change the Court's conclusion that the Justice of the Peace Court had the authority under § 1902A to transfer Defendants' cases and that Defendants' cases should not be dismissed on this ground.

With regard to Defendants' broader speedy trial claims, the Court also finds that Defendants' cases are substantially similar to the cases addressed in *Atsidis*. As the Court explained in *Atsidis*, the Court evaluates speedy trial claims under the four factor balancing test articulated by the United States Supreme Court in *Barker v. Wingo*.<sup>5</sup> If the first *Barker* factor—length of delay—is not presumptively prejudicial, i.e. if it does not exceed one year, then the Court will generally not consider the other *Barker* factors.<sup>6</sup> Less than a year has passed since the arrest of Defendants Hodges (Dale), Moore, Baker, Hamilton, Frasso, Romano, Jackson, Miles, Griffith,

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<sup>4</sup> *Atsidis*, 2018 WL 1053009, at \*2–3.

<sup>5</sup> The four *Barker* factors are: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) prejudice to the defendant. *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)).

<sup>6</sup> *Atsidis*, 2018 WL 1053009, at \*3 (citing *Cooper v. State*, 32 A.3d 988, 2011 WL 6039613, at \*7 (Del. 2011) (TABLE)).

McCarthy, Hoffman, Garin, and Hodges (Lauren), and the Court does not find that these Defendants' speedy trial rights have been violated.

Slightly more than a year has now passed since the arrest of Defendants Roney, Doneker, McNulty, Borgesi, Gonzon, and Samaroo—who were all arrested in March 2017—however, the Court finds that the full *Barker* analysis performed for the *Atsidis* defendants George Atsidis and Kristen Wyatt applies here.<sup>7</sup> The primary source of delay in these cases was a legislative change in the Justice of the Peace Court's jurisdiction. Considering the *Barker* factors, and taking into account all relevant factual circumstances, the Court finds that that Defendants Doneker, McNulty, Borgesi, Gonzon, and Samaroo's speedy trial rights have not been violated.

For the foregoing reasons, Defendants' Motions to Dismiss are **DENIED**, and the stay issued in each of these matters is lifted. The matters shall be scheduled for trial.

**IT IS SO ORDERED.**

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Judge Kenneth S. Clark, Jr.

KSC/km

Cc: John Donahue, Esq.  
Georgia Pham, Esq.  
Caroline Brittingham, Esq.

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<sup>7</sup> See *id.* at \*3–4.